

## Update: Juvenile Traffic Benchbook (Revised Edition)

### CHAPTER 6

#### Elements of Selected Criminal Traffic Offenses

#### “Drunk Driving” Offenses

#### 6.9 Section 625(1) and (8) Offenses—OWI

##### D.\* Issues

Insert the following text after the partial paragraph at the top of page 103:

In *People v Derror (Derror II)*, \_\_\_ Mich \_\_\_, \_\_\_ (2006), the Supreme Court clarified that its decision in *People v Schaefer*, 473 Mich 418 (2005), also applies in cases involving violations of MCL 257.625(8).

Said the *Derror* Court:

“The plain language of MCL 257.625(8) does not require the prosecution to prove beyond a reasonable doubt that a defendant knew he or she might be intoxicated. MCL 257.625(8) does not require intoxication, impairment, or knowledge that one might be intoxicated; it simply requires that the person have ‘any amount’ of a schedule 1 controlled substance in his or her body when operating a motor vehicle. We thus clarify *Schaefer* and hold that, in prosecutions involving violations of subsection 8, the prosecution is not required to prove beyond a reasonable doubt that a defendant knew he or she might be intoxicated.” *Id.* at \_\_\_.

In addition to its clarification of *Schaefer*, *supra*, the *Derror II* Court reversed the Court of Appeals decision in *People v Derror (On Reconsideration) (Derror I)*, 268 Mich App 67 (2005), and held that 11-carboxy-THC is a schedule 1 controlled substance. Therefore, delete the October 2005 update to page 103 and insert the following case summary:

\*Relettered as “D” by the October 2005 update.

The defendant in this case was the driver in a head-on collision that killed one person, paralyzed two more, and less-seriously injured another. *Derror II, supra* at \_\_\_\_\_. The defendant admitted smoking marijuana four hours before the accident, and blood tests taken shortly after the accident showed that the defendant had 11-carboxy-THC, a metabolite of THC, the psychoactive ingredient of marijuana, in her system at the time of the accident. *Id.* at \_\_\_\_\_. At trial, the court held that 11-carboxy-THC is not a schedule 1 substance, but that presence of the substance in the defendant's blood was admissible as circumstantial evidence to establish that the defendant had at some time ingested THC, which is a schedule 1 controlled substance *Id.* at \_\_\_\_\_. The defendant was convicted of operating a motor vehicle with the presence of a schedule 1 controlled substance in her body, causing death and serious injury (MCL 257.625(5)). *Id.* at \_\_\_\_\_. The Court of Appeals affirmed the trial court's ruling that 11-carboxy-THC was not a schedule 1 controlled substance. *Derror II, supra* at \_\_\_\_\_. The Supreme Court, however, reversed this ruling. According to the Court:

“Because 11-carboxy-THC qualifies as a derivative, and since derivatives are included within the definition of marijuana, which MCL 333.7212(1)(c) specifically lists as a schedule 1 controlled substance, we hold that 11-carboxy-THC is a schedule 1 controlled substance under MCL 333.7212(1)(c) for the purpose of MCL 257.625(8).” *Derror II, supra* at \_\_\_\_\_.